

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|---|-------------------------------------|---------------------------|--|---|--|
| Investigator: Santosh Prakash | Team: Squad #8 | CCRB Case #: 201605451 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Sunday, 06/19/2016 9:25 PM | Location of Incident: [REDACTED] | Precinct: 47 | 18 Mo. SOL 12/19/2017 | EO SOL 12/19/2017 | |
| Date/Time CV Reported Sun, 06/19/2016 10:50 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 06/23/2016 11:06 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

| Witness(es) | Home Address |
|-------------|--------------|
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Redmond Murphy | 01893 | 956119 | 047 PCT |
| 2. POM Mark Fleming | 24493 | 941763 | 047 PCT |
| 3. Officers | | | |
| 4. An officer | | | |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------------|-----------|--------|----------|
| 1. POM Rafael Rispoli | 12456 | 956201 | 047 PCT |
| 2. POM Matthew Vinzo | 31313 | 956320 | 047 PCT |
| 3. SGT Salvatore Ronzino | 5445 | 940671 | 047 PCT |
| 4. POF Eleanor Walsh | 24470 | 946384 | 047 PCT |
| 5. POM Christophe Olear | 17522 | 959006 | 047 PCT |
| 6. SGT Wilson Lema | 4236 | 942053 | 047 PCT |
| 7. POM Daniel Bergamini | 11304 | 955754 | 047 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|---------------|---|-----------------------------|
| A. Officers | Abuse: Officers entered § 87(2)(b) [REDACTED] in the Bronx. | [REDACTED] |
| B. Officers | Force: Inside § 87(2)(b) [REDACTED] officers used physical force against § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] | [REDACTED] |
| C. An officer | Force: Outside § 87(2)(b) [REDACTED] an officer used physical force against § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] | [REDACTED] |
| D. An officer | Discourtesy: Outside § 87(2)(b) [REDACTED] an officer spoke discourteously to § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] | [REDACTED] |
| E. Officers | Force: Outside § 87(2)(b) [REDACTED] officers used physical force against § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] | [REDACTED] |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| F. An officer | Force: Outside § 87(2)(b) an officer used a chokehold against § 87(2)(b) § 87(2)(b) | |
| G. Officers | Force: Outside § 87(2)(b) officers punched § 87(2)(b) § 87(2)(b) | |
| H.POM Redmond Murphy | Force: Outside § 87(2)(b) Police Officer Redmond Murphy used physical force against § 87(2)(b) § 87(2)(b) | |
| I.POM Mark Fleming | Force: Inside RMP # § 87(2)(b) Police Officer Mark Fleming restricted § 87(2)(b) § 87(2)(b) breathing. | |
| J.POM Mark Fleming | Force: Inside RMP # § 87(2)(b) Police Officer Mark Fleming used physical force against § 87(2)(b) § 87(2)(b) | |

Case Summary

On June 19, 2016, at approximately 8:57 pm, 47th Precinct officers entered § 87(2)(b) § 87(2)(b)'s apartment at § 87(2)(b) and arrested him for assaulting his spouse. **(Allegation A)** The officers used force in the process of handcuffing him. **(Allegation B)** § 87(2)(b) was then removed from his apartment and escorted outside to a marked RMP parked in front of the building. As they reached the RMP (§ 87(2)(b)) an officer allegedly slapped the back of § 87(2)(b)'s head, and told him to "shut the fuck up." **(Allegations C, D)**. In response, § 87(2)(b) turned around and began to protest, at which point several officers brought him down to the ground **(Allegation E)**. An officer allegedly used a chokehold on § 87(2)(b) while taking him down. **(Allegation F)** Officers then proceeded to jointly punch § 87(2)(b) hitting him all over his body for approximately one minute. **(Allegation G)** During this time, PO Redmond Murphy held his knee against the back of § 87(2)(b)'s neck. **(Allegation H)** § 87(2)(b) was then raised and placed into the RMP face-down. Allegedly, § 87(2)(b) was transported to the stationhouse in this position with PO Mark Fleming on top of him, restricting his breathing **(Allegation I)** En route, PO Fleming allegedly punched § 87(2)(b) in the face repeatedly, striking his right cheek. **(Allegation J)** § 87(2)(b) was later taken to § 87(2)(b) Hospital, where he received stitches for a lip contusion. § 87(2)(b) was § 87(2)(a) 160.50

The investigation obtained video footage of the incident from two cell phone recordings and several surveillance cameras; the relevant files are embedded through this report. (BR02 – BR06) This case surpassed the 90-day benchmark because the investigation sought analysis from the Office of the Chief Medical Examiner regarding a possible restricted breathing allegation captured on video.

Mediation, Civil, and Criminal Histories

Due to § 87(2)(b) § 87(2)(b) injuries and his arrest, this case was not mediation eligible. Notice of claim results are pending. § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b). § 87(2)(b) has no criminal court history. (BR43)

Civilian and Subject Officer Identification

- § 87(2)(b)
- PO Redmond Murphy has been a member of service for 2 years; he has no prior CCRB complaints.
- PO Mark Fleming has been a member of service for 10 years; he has been a subject in 3 prior cases, on 6 allegations, none of which were substantiated. § 87(2)(g)

Findings and Recommendations

Subject Officer Identification

Officer identification is at issue in **Allegation A** through **Allegation G**:

- Officers present: Although § 87(2)(b) was unable to provide sufficiently specific officer descriptions, the investigation identified – with the video evidence, and the officers’ statements – all nine officers present at the scene: Sgt. Salvatore Ronzino, PO Rafael Rispoli, PO Matthew Vinzo, PO Redmond Murphy, PO Mark Fleming, PO Eleanor Walsh, PO Christopher O’Lear, and PO David Bergamini.
- Entry and force (incident to arrest): although several officers acknowledged entering § 87(2)(b)’s residence and using force to restrain him, the investigation was unable to identify all of the officers involved in these actions. As such, **Allegations A** and **B** were pled against **officers**.
- Slap and profanity (outside building): § 87(2)(b) alleged the action and remark against one of the two officers who escorted him to the RMP – both described as white males, approximately 5’10” tall, of medium build. PO Fleming and PO Murphy roughly fit the description and acknowledged escorting § 87(2)(b). However, all of the interviewed officers denied any knowledge of these allegations, and the surveillance cameras documented no relevant interactions. As such, **Allegations C** and **D** were pled against **an officer**.
- Subsequent force (outside building): § 87(2)(b) alleged a sequence of multiple force allegations against several officers, stating that these actions – a group takedown, chokehold, and collective punching – occurred outside RMP #§ 87(2)(b) after he was slapped but prior to his removal to the stationhouse. The officers testified to an entirely different set of events, stating that § 87(2)(b)’s injuries were self-inflicted; that he repeatedly banged his head against the RMP’s window, after being placed inside, and that he eventually managed to eject himself onto the street. While the officers – namely, PO Rispoli, PO Redmond, PO Fleming, and PO Walsh – acknowledged that the scene was chaotic, and described a protracted struggle to control § 87(2)(b) they denied engaging in the force alleged. The investigation interviewed four civilians who witnessed the incident from different vantage points; none gave conclusive testimony. Two of the witnesses – § 87(2)(b) and § 87(2)(b) – provided cell phone video recordings. Together with the surveillance footage, the records established that § 87(2)(b) sustained facial bleeding after he was escorted outside, but did not document the force itself. As such, the investigation was ultimately unable to attribute specific actions to any one officer, and determine what force was used by who, if any. **Allegations E, F, and G** were thus pled against **officers**.

Allegation A: Officers entered § 87(2)(b) in the Bronx.

Allegation B: Inside § 87(2)(b) officers used physical force against § 87(2)(b)

§ 87(2)(g)

It is undisputed that officers entered § 87(2)(b)'s apartment to effectuate his arrest. It is also undisputed that officers used force in the process of handcuffing § 87(2)(b) by taking him down to the floor. § 87(2)(g)

The investigation established the following facts via records, testimony, and video footage: on June 19, 2016, at 8:49 PM, § 87(2)(b) a relative of § 87(2)(b) called 911 to report a domestic incident at § 87(2)(b) (BR23); officers arrived on scene at approximately 8:55 pm, and briefly conferred with § 87(2)(b) outside the building; all 9 previously identified officers then went upstairs, and knocked on § 87(2)(b) entering the premises soon thereafter to arrest § 87(2)(b). As obliquely visible in the below-embedded photo, the apartment's doorway opens on to a narrow railroad-style interior corridor. A third floor surveillance camera – positioned above § 87(2)(b) but angled away from its doorway – shows the following (see video embedded below): the officers ascend upstairs, with PO Rispoli and PO Vinzo in the lead; PO Rispoli and PO Vinzo appear to approach § 87(2)(b) going off-camera (01:28); excluding Sgt. Ronzino, the other officers then follow in the same direction, also going off-camera (01:55); a next-door neighbor, identified by the investigation as § 87(2)(b) is seen watching through his open door (00:18); about 90 seconds after PO Vinzo and PO Rispoli first approach the door, § 87(2)(b) is brought out into the hallway (02:50). (BR06)



Apartment Photo



3rd Floor Camera

§ 87(2)(b) acknowledged marital troubles but denied assaulting his wife that night, verbally or physically; however, he could not describe exactly what he and his wife were doing, or how they were interacting, prior to the incident. Regarding the entry, § 87(2)(b) stated that he heard knocking and opened his door, at which point officers in the hallway advised that he was under arrest. Without providing any further information, the officers came into his apartment without permission and handcuffed him. § 87(2)(b) stated that he did not resist in any way, and remained entirely compliant and cooperative as officers removed him from the apartment and escorted him downstairs. (BR01)

As stated, § 87(2)(b) was ultimately charged with assaulting § 87(2)(b). The arrest report generated by PO Vinzo, the arresting officer, states the following for narrative: “C/V states she was engaged in verbal dispute with perpetrator. Defendant did then choke and strike C/V with a closed fist to the chin causing pain and bruising. Upon arresting defendant, perpetrator did flail arms and actively resisted while being placed into handcuffs.” (BR24) PO Vinzo also prepared a domestic incident report, which notes that § 87(2)(b) filed a sworn statement of allegations. BR31 In his memo book entry regarding the arrest, PO Vinzo noted that § 87(2)(b) was “placed into handcuffs, extremely irate, flailing arms and actively resisting arrest.” (BR24) PO Rispoli, PO Fleming, and PO Redmond each prepared TRI reports for the incident, and documented “forcible takedown” as the only exercised force measure; the officers confirmed that the this takedown referred to § 87(2)(b)’s initial resistance inside the apartment. (BR28, BR29, BR30)

§ 87(2)(b) an auxiliary officer, identified himself as a relative of § 87(2)(b). He stated he came to check on her safety that night, after she suggested by telephone that her husband was beating her. When he reached § 87(2)(b), § 87(2)(b) met him outside, showing visible injuries on her face, mouth, and throat. With some encouragement, § 87(2)(b) agreed to leave her husband apartment and stay with § 87(2)(b) and advised that she needed to gather her belongings; when § 87(2)(b) never came back down, § 87(2)(b) called her cell phone. § 87(2)(b) answered but appeared to be involved in a struggle upstairs, and stated that § 87(2)(b) was holding her captive. § 87(2)(b) promptly called 911 and reported that an assault was in progress, conveying what he knew to the responding officers. § 87(2)(b) accompanied the officers as they went upstairs to the apartment. He corroborated the officers’ statements regarding § 87(2)(b)’s active physical resistance, but said nothing about the takedown. (BR07, BR08) The 911 records corroborate his testimony. (BR23)

§ 87(2)(b) § 87(2)(a) 160.50 was interviewed at § 87(2)(b) (she continued to reside there with § 87(2)(b) post-incident): she stated that § 87(2)(b) never hit her that night; that she had intentionally lied to § 87(2)(b) about being abused, due to marital disagreements with § 87(2)(b). § 87(2)(b) stated that she saw officers quickly enter and remove § 87(2)(b) from the apartment, but said nothing about the takedown. (BR10) The investigation also interviewed § 87(2)(b) who stated that he observed the officers’ enter the apartment after § 87(2)(b) opened the door. He could not see what then occurred inside the apartment, and only saw § 87(2)(b) being taken downstairs in handcuffs. (BR15)

All of the involved officers were consistent in stating that: § 87(2)(b) advised that the assault was in progress; when § 87(2)(b) opened the door, he appeared hostile in demeanor; before any substantive verbal engagement with § 87(2)(b) (who only speaks Spanish), § 87(2)(b) appeared behind him, crying. The officers were unclear on what injuries, if any, they observed on § 87(2)(b). (BR16-BR21) PO Vinzo stated that upon seeing § 87(2)(b) he asked: “did he hit you?” (BR20) In response, § 87(2)(b) pointed at § 87(2)(b) and answered “yes.” PO Vinzo, still positioned in the hallway with the other officers, then decided to place § 87(2)(b) under arrest; he stated the same to § 87(2)(b) and instructed him to place his hands behind his back. § 87(2)(b) initially complied by turning around and

facing the interior corridor wall. PO Vinzo and PO Rispoli then crossed the door's threshold and into the corridor to handcuff § 87(2)(b). At no point prior was § 87(2)(b) asked to exit the apartment. As the two officers neared § 87(2)(b) he suddenly began to flail his arms, causing the officers to forcibly take him down to the ground, face-down. PO Rispoli, PO Murphy, and PO Fleming stated the same, adding that § 87(2)(b) was also attempting to turn around, and moving his elbows about, in addition to flailing his arms and preventing the officers from handcuffing him. (BR17-BR19) The involved officers were generally consistent in stating that PO Rispoli and PO Vinzo initiated the takedown, prompting the others – chiefly, PO Fleming and PO Redmond – to enter the corridor and assist in restraining § 87(2)(b) on the ground. The involved officers all stated that § 87(2)(b) was quickly handcuffed and removed from the building; he presented no visible injuries at that point. (BR16-BR21)

Under Payton v. New York, 445 U.S. 573 (1980), police officers cannot make warrantless and nonconsensual entries to effectuate arrests, absent exigent circumstances. (BR37) In New York, exigent circumstances include the “emergency exception” to the warrant requirement, where the police have “reasonable grounds to believe that there is an emergency at hand and [that there is] an immediate need for their assistance for the protection of life or property” in imminent danger. People v. Holmes, N.Y. Misc. LEXIS 3216 (2014). (BR38) As the Second Circuit has noted, domestic disputes are routinely exigent as emergencies: “Courts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger.” Tierney v. Davidson, 133 F.3d 189 (1998). (BR39)

Per Patrol Guide Procedure 221-01, “any application or use of force must be reasonable under the circumstances.” Under the applicable standard of objective reasonableness, “the reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force.” (BR40)

§ 87(2)(b), § 87(2)(g)
[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation C: Outside § 87(2)(b) **an officer slapped** § 87(2)(b)

Allegation D: Outside § 87(2)(b) **an officer spoke discourteously to** § 87(2)(b)

Allegation E: Outside § 87(2)(b) **officers used physical force against** § 87(2)(b)

Allegation F: Outside § 87(2)(b) **an officer used a chokehold against**

§ 87(2)(b)

Allegation G: Outside § 87(2)(b) **officers punched** § 87(2)(b)

Allegation H: Outside § 87(2)(b) **Police Officer Redmond Murphy used physical force against** § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) is equipped with two exterior surveillance cameras – one in the courtyard area by the building’s entrance, and one facing the street – both of which tracked § 87(2)(b)s escorted walk to the RMP. Nothing notable is captured in the courtyard camera footage. (BR05)



Courtyard



Street

The street-facing camera footage embedded above frames the following: § 87(2)(b) is escorted past the sidewalk and to a parked RMP, the rear doors of which are off-camera; at the top-right of the screen (9:01 pm, at 00:55), § 87(2)(b) then proceeds to wait in front of the vehicle for approximately 30 seconds; during this period, no notable physical exchanges are visible. § 87(2)(b) is eventually moved towards the RMP’s rear, off-camera. Due the camera angle, the street-facing surveillance footage does not capture any of the subsequent actions under analysis here, but shows the following: after § 87(2)(b) is seated inside the RMP, the officers appear to be conversing with each other, until they suddenly mobilize and

scramble around the RMP (9:04 pm, at 04:15); for the next few minutes, the RMP appears to be jolted about in its parked position, until the RMP then leaves the scene (9:08 pm, at 07:20). (BR04)

The investigation obtained two cell phone video recordings, both from friends of § 87(2)(b) who reside in the building (the two files are embedded on the following page). The first video, recorded by § 87(2)(b) begins with § 87(2)(b) on the ground directly outside the RMP door, lying face-down, with several officers above him. Between 00:03 and 00:06, an officer identified as PO Murphy appears to be positioned with his knee held against the back or side of § 87(2)(b)'s neck. At 00:13, § 87(2)(b) is raised upright. At 00:32, officers appear to be moving § 87(2)(b) backwards towards the RMP door. (BR02) The second video, recorded by § 87(2)(b) captures only the following relevant footage: between 01:15 and 01:34, PO Murphy, PO Fleming, and other officers appear to be standing by § 87(2)(b) is standing upright and still screaming “why,” as in the previous video; but here, § 87(2)(b) has blood smeared over a large part of his face, concentrated around his nose and mouth. (BR04) Both videos are interrupted by a loud and tumultuous altercation off-camera: the officers and civilians all testified that two males began fighting physically about an unrelated matter as officers were engaged with § 87(2)(b) § 87(2)(b). Though the investigation was unable to independently verify the chronological difference between the two videos, the jointly featured altercation, and the relative consistency between § 87(2)(b)'s physical and spatial positions, suggest some temporal overlap. (BR03)



cellphone video 1



cellphone video 2

§ 87(2)(b) stated that he did not resist in any manner as the officers handcuffed and removed him from his apartment. He remained entirely cooperative as two officers escorted him out of the building and towards an RMP parked curbside in front of the building. While walking over, § 87(2)(b) began inquiring about his arrest in a level voice. Upon reaching the RMP, its rear driver's side door was opened, and an officer placed his hand on § 87(2)(b)'s head, beginning to guide him into the vehicle. At this time, as § 87(2)(b) continued to calmly protest his arrest, one of the two escorting officers – he could not see who – suddenly slapped the back of his head with an open palm, and told him to “shut the fuck up.” § 87(2)(b) stated that he immediately turned around and began pushing back against the officers, in protest, at which point approximately four officers jointly took him down to the ground; in doing so, one of the officers locked his forearm around the front of § 87(2)(b)'s neck, holding it against his neck until § 87(2)(b) hit the ground face-down.

The officers then proceeded to punch § 87(2)(b) all over his body for approximately a minute. During this time, § 87(2)(b) felt the weight of approximately 3 officers on top of him, and stated that he felt knees pressed into his back and neck. An officer also placed a boot on the upper left side of his face. § 87(2)(b) could not attribute these actions to any one particular officer. No commands were issued, and he did not try to resist – he was completely

immobilized. § 87(2)(b) was eventually raised and placed into the RMP. § 87(2)(b) stated that he was not bleeding at this point, despite being punched repeatedly – that he began bleeding only after he was punched by PO Fleming en route to the stationhouse. (BR01)



Injury Images

§ 87(2)(b) submitted an array of self-photographed injury images (a selection is embedded above) depicting abrasions and bruising to the following parts of his body: the right side of his face, his bottom lip, his upper arm, underarm, legs, and neck (backside/nape). (BR42)

Medical records from § 87(2)(b) Hospital document that § 87(2)(b) sustained a “contusion of lip,” and note that he received “laceration repair” – presumably meaning stitches – to the corner of his mouth; which corner – and whether “laceration” and “contusion” refer to the same injury – are unknown. Similarly, the records refer to a “hematoma noted to right side of face,” and “abrasions noted to back of neck,” without additional details as to size, severity, and specific location. § 87(2)(b) told medical personnel, “I was beaten up.” No further statements are documented. X-rays and CT-scans revealed no fractures. Blood tests conducted at 11:55 pm revealed that § 87(2)(b) blood alcohol level was measured at 0.11%. (BR34)

§ 87(2)(b) was interviewed at the hospital by Captain Johnny Orellana after Sgt. Ronzino reported the incident to IAB. In his Supervisor’s TRI Assessment Report, Captain Orellana reported that: § 87(2)(b) was] in the rear seat of a marked radio car (RMP § 87(2)(b) at which time the subject struck the rear driver side window with his head. Then began kicking the rear driver side door of the marked radio causing damage to the door. The officers (Fleming, Murphy, and Rispoli) attempted to restrain the subject, when he began flailing his body and kicking at said officers. The subject sustained a laceration to the lip and bleeding from the nose. When questioned, the subject said the officers attacked and assaulted him prior to placing him in cuffs. The subject is alleging that officers punched him for no reason.” (BR27) Captain Orellana referred the incident to IAB for further investigation. For reasons unknown, IAB did not further investigate the case. As discussed previously, PO Fleming, PO Redmond, and PO Rispoli, who prepared the only TRI reports, noted “forcible takedown” as the only exercised force, and stated that this referred to the apartment takedown – not to any subsequent takedowns outside. However, the officers also check-marked that § 87(2)(b) s injuries were sustained as a result of “intentional action by MOS.” The officers also check-marked “foot strike” and “pushing/shoving” under “Force Used Against MOS.” (§ 87(2)(b) § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

PO Fleming, PO Redmond, PO Rispoli, and PO Walsh testified to direct involvement in the above-narrated struggle with § 87(2)(b) they described a chaotic and physically protracted situational dynamic, difficult at the time and difficult to reconstruct. However,

notwithstanding the minor and more significant differences between their testimonies, the officers all stated the following: that § 87(2)(b) – though he remained hostile as he was escorted out of the building – was seated inside RMP § 87(2)(b) without issue; that he suddenly began kicking one of the rear passenger doors and banging his head against the door window; that upon opening both rear doors, he kept kicking and thrashing his body about the length of the rear seat, as if he was attempting to launch himself out of the RMP; that the officers, positioned on both sides of the vehicle, could neither control nor pull him out of the vehicle, due to his size and energy; and that § 87(2)(b) ultimately managed to “kick himself out” through one of the rear doors, landing face-down on the street. PO Fleming, PO Redmond, PO Rispoli, and PO Walsh all stated that they did not cause § 87(2)(b) s apparent self-ejection. After briefly restraining and securing § 87(2)(b) on the ground, the officers raised him upright and –after a period of continued resistance to re-entry – ultimately got him inside the vehicle. The officers clarified that a crowd had started to gather around the RMP, in the midst of which a fight suddenly broke out, as § 87(2)(b) was being re-entered. Upon reviewing the two cell phone recordings, several of the officers believed that both recordings corresponded in time to this point of the incident. PO Fleming and PO Murphy stated that they first noticed § 87(2)(b) s facial bleeding when they went to raise him from the ground. PO Murphy stated that § 87(2)(b) had also banged his forehead and face against the RMP’s metal cage, in addition to “smashing” it against the rear door window, and that he had attempted to spit blood at the officers after the self-ejection. (BR17-BR19, BR21)

The officers all denied engaging in any of the alleged force, and stated that their efforts to restrain § 87(2)(b) were limited to pulling or pushing him out of the vehicle – that he was never punched, or held by his neck, or taken down. The officers denied slapping § 87(2)(b) or telling him to “shut the fuck up, at any point prior to his initial RMP placement. (BR17-19, BR21)

PO Murphy denied placing his knee or foot against § 87(2)(b) s face or neck at any point; he reviewed the relevant cell phone video and stated that it showed him kneeling down over § 87(2)(b) that given his own height, he was simply squatting with a bent knee, to adjust for his own height – that he needed to bend down to restrain § 87(2)(b) PO Murphy said that he “did not think” that his knee made contact with § 87(2)(b) s neck or face, stating: “I’m tall, I’m just bending down trying to hold him – if anything it would be on his shoulder, but I think I’m just bending down.” PO Murphy noted that the officers needed to control him because he had already started spitting blood at this time. (BR18)

§ 87(2)(b) stated that he observed the following from the opposite side of the street: § 87(2)(b) was first placed into the RMP without incident; shortly thereafter, about three officers then removed him from the vehicle § 87(2)(b) did not know why; once outside the RMP, these officers grabbed § 87(2)(b) and forcibly took him down to the ground, face-down. § 87(2)(b) could not further describe the mechanics of the takedown and did not suggest, on further questioning, that he observed any other use of force. § 87(2)(b) stated that he then crossed the street, approached the RMP and started recording on cell phone, at which time he became involved in the unrelated physical altercation, thus terminating his video. (BR11, BR12) § 87(2)(b) stated that he was seated in his vehicle on the opposite side of the street, at the end of the block, with a clear line of sight on the RMP, and within hearing range: he corroborated § 87(2)(b)

basis of knowledge. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation I: Inside RMP # § 87(2)(b) Police Officer Mark Fleming restricted § 87(2)(b) s breathing.

Allegation J: Inside RMP # § 87(2)(b) Police Officer Mark Fleming used physical force against § 87(2)(b)

It is undisputed that PO Fleming rode the rear with § 87(2)(b) and that PO Rispoli and PO Murphy were at the front.

§ 87(2)(b) who said that he was not yet bleeding, stated that he was positioned face-down against the rear seat for the whole drive. He alleged that PO Fleming got on top of him before the vehicle left the scene; the pressure of his bodyweight against § 87(2)(b) s back caused his breathing to be restricted. § 87(2)(b) alleged that once the RMP began moving, without any provocation on his part whatsoever, PO Fleming began to punch him with a closed fist, striking his exposed right cheek with five separate blows. (BR01)

The officers stated that § 87(2)(b) – who remained as antagonistic as before – was transported upright. PO Fleming stated that he had to restrain § 87(2)(b) who never stopped struggling, by holding him pressed against the door, his forearms locked against § 87(2)(b) s side and back. PO Fleming stated that he did not restrict his breathing at any

point, and denied punching him at any point. PO Rispoli and PO Murphy corroborated his statements entirely. (BR19)

As discussed, § 87(2)(b) s medical records document a “contusion of lip,” and note that he received “laceration repair” – presumably stitches – to the corner of his mouth. An abrasion was noted to the right side of his face. (BR34) Both injuries are visible in the self-photographed images. (BR42)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Squad: 8

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date